

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

Jimmy Lee Sawney,

Plaintiff,

v.

Case No. 21-CIV-368-RAW-KEW

Kilolo Kijakazi, Acting Commissioner of
the Social Security Administration,

Defendant.

ORDER

The Complaint in this matter was filed on December 14, 2021 [Docket No. 2] seeking judicial review of the adverse administrative decision denying benefits. Plaintiff also filed a Motion for Leave to Proceed *In Forma Pauperis* on the same date [Docket No. 4]. An order was issued by this court on December 17, 2021 setting forth the deficiencies in Plaintiff's Motion and requiring that he "submit a notarized, Amended Motion with the required information no later than January 6, 2022." Nothing was filed by the Plaintiff.

On February 1, 2022, this court entered the following minute order:

By minute order entered December 17, 2021, this court directed Plaintiff to file an Amended Motion seeking leave to proceed in forma pauperis in this case with additional financial information. To date, Plaintiff has failed to comply with this Order. As a result, Plaintiff shall show cause in writing as to why he has failed to comply with this Court's directive or submit Amended Motion no later than February 11, 2022. The failure to comply with this Order shall result in the reassignment of this case to a United States District Judge and the entry of a Report and Recommendation, recommending that the IFP motion be denied.

On February 7, 2022, Plaintiff's counsel filed a Response to Order to Show Cause. He stated that "[m]ultiple attempts to contact the Plaintiff for an amended form have been

made without success.” As a result, Plaintiff’s counsel admitted Plaintiff “failed to comply with the court’s order and this matter is subject to dismissal.”

Dismissal for the failure to prosecute is discretionary based upon the circumstances presented. Fed. R. Civ. P. 41(b); *United States v. Berney*, 713 F.2d 568, 571 (10th Cir. 1983). Dismissal under Rule 41 (b) is viewed as an imposition of a sanction. *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir. 1994). In this case, Plaintiff has provided no explanation for his failure to comply with this court’s order or to prosecute this action.

The Magistrate Judge has reviewed the record and has recommended that this case be dismissed for Plaintiff’s failure to comply with this court’s order and to prosecute this action. Plaintiff has failed to object to the Magistrate’s Findings and Recommendation. Accordingly, the recommendation of the Magistrate is adopted and the court finds that dismissal is appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case is dismissed without prejudice. Plaintiff’s counsel shall serve a copy of this order upon Plaintiff by return receipt mail at his last known address.

IT IS SO ORDERED this 9th day of June, 2022.



HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA